



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 27, 1998

Ms. Susan J. Barnett
Assistant District Attorney
Specialized Crime Unit
Collin County
Collin County Courthouse
210 S. McDonald, Ste. 324
McKinney, Texas 75069

OR98-2044

Dear Ms. Barnett:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. We assigned your request ID# 118196.

The Collin County District Attorney's Office (the "district attorney") received a request for twelve categories of information concerning open records requests, several cases, and the district attorney's staff. You have released some of the requested information. You contend that some of the requested information is excepted from disclosure pursuant to section 552.108 of the Government Code and section 143.089 of the Local Government Code. We have considered your arguments and reviewed the submitted information.

First, you state that no records exist for request items 3 and 8. The Open Records Act does not require a governmental body to make available information which does not exist at the time of the request. Open Records Decision No. 362 (1983). Thus, you need not comply with the request for items 3 and 8.

Second, you state that you do not have information responsive to items 9 and 10 in the format requested. The Open Records Act does not require a governmental body to create or prepare new information. Open Records Decision Nos. 572 (1990), 342 (1982). Additionally, chapter 552 of the Government Code does not require a governmental body to prepare information in a form requested by a member of the public. Open Records Decision No. 467 (1987). However, if a request for public information requires programming or manipulation of data or the information could be made available in the requested form only at a cost that covers the programming and manipulation of data, a governmental body is required to provide the requestor with a written statement describing the form in which the information is available, a description of what would be required to provide the information in the requested form, and a statement of the estimated cost and time to provide the

information in the requested form. Gov't Code § 552.231(a), (b). Once the governmental body provides the statement to the requestor, the governmental body has no obligation to provide the requested information in the requested form until the requestor responds to the governmental body in writing. *Id.* §552.231(d). You have informed the requestor that the information does not exist in the form requested and have given the requestor access to the Collin County computer system to obtain the requested information.

Next, you inform us that items 2 and 12 are broad requests. You have asked the requestor to narrow his request and are awaiting his reply. Section 552.222(b) of the Government Code permits a governmental body to ask the requestor to narrow his request if a large amount of information has been requested.

You further contend that section 552.108(a)(2) excepts the information responsive to items 5-7 from public disclosure. You only submit the information from three cases as records responsive to items 5-7. The information has been filed with a court. Documents filed with the court are public documents and must be released. *See Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54, 57-58 (Tex. 1992). Because you only submit the information for our review, any other records that you may have for these three cases must be released unless they are otherwise confidential by law. *See* Gov't Code §§ 552.301 (governmental body must ask attorney general for decision for information it wishes to withhold and submit specific information requested), .352 (distribution of confidential information is a criminal offense).

Lastly, you assert that information responsive to item 11, which contains information from the personnel files of police officers, is confidential under section 143.089 of the Local Government Code. You have submitted a representative sample of documents responsive to item 11.¹ Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Chapter 143 of the Local Government Code governs the maintenance of police and fire departments in municipalities that have adopted chapter 143 and elected to be a civil service city. You have informed us that the city of McKinney is not a civil service city and that the police officers at issue are employed by the Collin County District Attorney's Office, not the city. Thus, section 143.089 of the Local Government Code is inapplicable. Accordingly, the documents must be released as you have not raised any of the Open Records Act's exceptions against public disclosure. However, we note that these documents include information excepted from public disclosure by sections 552.117 and 552.130 of the Government Code.

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.117(2) excepts from public disclosure a peace officer's home address, home telephone number, social security number, and information concerning whether the peace officer has family members. Thus, you must withhold such information under section 552.117(2).

Section 552.130 governs the release and use of information obtained from motor vehicle records. Section 552.130 provides in relevant part as follows:


(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]

You must withhold the drivers' license numbers from these documents.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/nc

Ref.: ID# 118196

Enclosures: Submitted documents

cc: Mr. Mark Gilliam
P.O. Box 2141
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(w/o enclosures)